IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 984 of 2001

Date of decision:- 06/05/2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Initials of Judge

Date :- 06/5/2006

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.984 of 2001

Sri (Dr.) Dhanwant Singh Bhalla
Age 71 years
S/o late Karam Singh Bhalla
R/o Yoga Trust Munikereti
Tehri Garhwal .....Applicant

Versus

1. State of Uttaranchal
2. Chief Judicial Magistrate
   Tehri Garhwal, New Tehri
3. Sessions Judge, Tehri Garhwal
   New Tehri .....Respondents

Sri J. P. Joshi learned counsel for the applicant.
Sri Lalit Verma learned AGA.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the proceeding in case No.1807/1999 under section 406, 420 IPC and order dated 09.08.2001 passed by the Sessions Judge, Tehri Garhwal in criminal revision No.37/2000.

2. Brief facts of the case are that the applicant lodged a report in the police station Munikereti, District Tehri Garhwal alleging therein that a theft has been taken place in his Ashram on 22.3.1996. Thereafter, the police investigated the matter and the final report was submitted on 13.01.1997. On this, the applicant moved an application before the Magistrate that the police may be directed to re-investigate the matter. On the request of the applicant, the Magistrate directed the police to re-investigate the matter. The police re-investigated the matter and again a final report was submitted. The Magistrate instead of rejecting the final report or

sending the matter for re-investigation summoned the applicant-complainant himself under section 406, 420 IPC vide order dated 24.11.1999.

3. Feeling aggrieved by the said order, the complainant-applicant moved an application before the Magistrate with the prayer to recall the order dated 24.11.1999. On 26.8.2000 the Magistrate rejected the said application on the ground that the application filed by the complainant to recall the earlier order is not maintainable.

4. Feeling aggrieved by the order dated 26.08.2000, the applicant-complainant preferred a revision before the Sessions Judge. The applicant did not challenge the cognizance order before the Sessions Judge. The Sessions Judge dismissed the revision on the ground that the delay condonation application was rejected and as such the revision was dismissed. Feeling aggrieved by the criminal proceedings and order passed by the Sessions Judge, the present petition has been filed by the applicant.

5. Heard Sri J.P. Joshi learned counsel for the applicant and Sri Lalit Verma learned AGA for the State.

6. It was contended on behalf of the applicant that the order dated 24.11.1999 passed by the Magistrate is bad in law and the Magistrate had committed a manifest error in summoning the complainant-applicant. It was further contended that the Magistrate had passed a cryptic order by which the applicant (complainant) had been summoned under section 406, 420 IPC. The Magistrate should have passed a speaking order while

summoning the complainant. It was contended that the first final report was submitted by the police and the police has not requested to the court that the case may be expunged from the crime register. It was further contended that the police has not mentioned in the final report that the applicant-complainant had lodged a false case. It was contended that the I.O. had not submitted before the court that the complainant had committed the offence punishable under section 182 Cr.P.C. Learned counsel for the applicant contended that in such circumstances as to how the Magistrate came to the conclusion that the applicant had committed the offence punishable under section 406, 420 IPC. Learned AGA could not support the order by which the Magistrate summoned the complainant. It is well settled position of law that when the final report is submitted before the Magistrate, the Magistrate can either to summon the accused on the basis of the investigation report or to accept the final report. Before taking cognizance on the basis of the final report, the Magistrate must have satisfied himself that there is sufficient evidence against the accused/complainant. The Magistrate should have passed a speaking order while summoning the complainant. If the Magistrate feels that there is sufficient ground to proceed against any other person, he should narrate the evidence in his order. The Magistrate instead of rejecting the final report or sending the matter for re-investigation summoned the complainant by a cryptic order. Summoning of an accused is a serious matter and it should not be taken lightly. If the Magistrate was of the view that there was a prima facie case against the complainant, he should have discussed the evidence. The order passed by the

Magistrate does not show any reason for summoning the complainant under section 406, 420 IPC.

7. In view of the above, the cognizance order is bad in law. Summoning order dated 24.11.1999 passed by the Chief Judicial Magistrate, Tehri Garhwal in criminal case No.1807/1999 is set aside. The case is remitted back to the learned Magistrate, who will pass the appropriate order in the light of the observations made above.

8. The petition is disposed of accordingly. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 06.05.2006
LSR